

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PLANT HEALTH CARE, INC.,)	
a Pennsylvania corporation,)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	JURY TRIAL DEMANDED
)	
ORGANIC PLANT HEALTHCARE, LLC,)	
a North Carolina limited liability)	TM Reg. # 3,213,474
company,)	3,213,473
)	2,619,263
Defendant.)	

COMPLAINT

Plaintiff, Plant Health Care, Inc., through its attorneys, Buchanan Ingersoll & Rooney PC, hereby complains of Defendant, Organic Plant Healthcare, LLC, as follows:

Jurisdiction and Parties

1. This is an action for infringement of United States Trademark Registration No. 3,213,474 for the trademark "PLANT HEALTH CARE", United States Trademark Registration No. 3,213,473 for the trademark "PLANT HEALTH CARE, INC." and United States Trademark Registration No. 2,619,263 for the trademark "PLANT HEALTH CARE, INC. and Design", arising under § 32 of the Lanham Act, 15 U.S.C. § 1114; for false designation of origin and unfair competition arising under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); for federal trademark dilution arising under § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); for Pennsylvania state trademark dilution arising under 54 Pa.C.S.A. § 1124; and for unfair competition under the common law of the Commonwealth of Pennsylvania.

2. Subject matter jurisdiction of this Court is properly vested under 28 U.S.C. §§ 1331, 1338(a) and 1338(b). Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and 1391(c).

3. Plaintiff, Plant Health Care, Inc. (hereinafter referred to as "PHC"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having a place of business at 440 William Pitt Way, Pittsburgh, Pennsylvania 15238.

4. On information and belief, Defendant, Organic Plant Healthcare, LLC (hereinafter referred to as "ORGANIC"), is a limited liability company organized and existing under the laws of the State of North Carolina, having a place of business at 626 W. Charles Street, Matthews, North Carolina 28105. ORGANIC's products may be purchased through its website at "www.organicplanthealthcare.com" and, thus, ORGANIC is doing business within the Commonwealth of Pennsylvania and this Judicial District.

Allegations of Fact

5. PHC is the owner of United States Trademark Registration No. 3,213,474 for the trademark "PLANT HEALTH CARE" for a "house mark for a full line of biological fertilizers and soil conditioners for domestic, agricultural, commercial and horticultural use". A copy of a report from the TESS database of the United States Patent and Trademark Office for Trademark Registration No. 3,213,474 is attached hereto as Exhibit A.

6. PHC is the owner of United States Trademark Registration No. 3,213,473 for the trademark "PLANT HEALTH CARE, INC." for a "house mark for a full line of biological fertilizers and soil conditioners for domestic, agricultural, commercial and horticultural use". A

copy of a report from the TESS database of the United States Patent and Trademark Office for Trademark Registration No. 3,213,473 is attached hereto as Exhibit B.

7. PHC is the owner of United States Trademark Registration No. 2,619,263 for the trademark "PLANT HEALTH CARE, INC. and Design" for a "house mark for a full line of biological fertilizers and soil conditioners for domestic, agricultural, commercial and horticultural use". A copy of a report from the TESS database of the United States Patent and Trademark Office for Trademark Registration No. 2,619,263 is attached hereto as Exhibit C. PHC's trademarks registered under United States Trademark Registration Nos. 3,213,474; 3,213,473 and 2,619,263 will be collectively referred to herein as the "PLANT HEALTH CARE marks".

9. PHC manufactures and sells a complete line of biological fertilizers, soil conditioners and other naturally-based products for agriculture, commercial landscaping and land reclamation industries under the federally registered PLANT HEALTH CARE marks. In connection with the sale of such products, PHC provides full-scale technical support services to help customers use its products to their full potential and to successfully adopt PHC's practices also under the federally registered PLANT HEALTH CARE marks.

10. Since at least as early as 1995, long prior to the acts of ORGANIC complained of herein, PHC has sold biological fertilizers, soil conditioners and other naturally-based products for agriculture, commercial landscaping and land reclamation industries and has provided technical support services to help customers use its products to their full potential and to successfully adopt PHC's practices under the PLANT HEALTH CARE marks throughout the United States and the world, including the Commonwealth of Pennsylvania.

11. Since long prior to the acts of ORGANIC complained of herein, the aforesaid PLANT HEALTH CARE marks have been extremely well-known among consumers as a source of quality products and related support services.

12. By virtue of the aforesaid extensive use, advertising and promotion, and long prior to the acts of ORGANIC complained of herein, PHC's aforesaid PLANT HEALTH CARE marks have become famous and acquired a strong secondary meaning among purchasers of biological fertilizers, soil conditioners and other naturally-based products for agriculture, commercial landscaping and land reclamation industries who have come to recognize the PLANT HEALTH CARE marks as signifying PHC. The PLANT HEALTH CARE marks have become assets of substantial value to PHC as a symbol of their quality products and their goodwill, and the PLANT HEALTH CARE marks are recognized throughout the United States by the public and business customers who associate the PLANT HEALTH CARE marks with PHC.

13. PHC now owns a most valuable goodwill which is symbolized by its aforesaid PLANT HEALTH CARE marks, and the use of said marks substantially increases the value of PHC's business and the salability of the goods sold under the marks.

14. On information and belief, ORGANIC is selling and offering for sale fertilizers, soil conditioners and other organic-based products for commercial and residential use under the name and designation "ORGANIC PLANT HEALTHCARE". Copies of pages from ORGANIC's website illustrating such use are attached hereto as Exhibit D.

15. ORGANIC's use of "ORGANIC PLANT HEALTHCARE" as a company name and as a designation used on or in connections with its fertilizers, soil conditioners and other organic-based products for commercial and residential use incorporates entirely PHC's well-known and widely recognized "PLANT HEALTH CARE" name and federally registered mark.

16. ORGANIC's use of the aforesaid "ORGANIC PLANT HEALTHCARE" name and designation falsely and deceptively represents that its fertilizers, soil conditioners and other organic-based products emanate from PHC, or as being connected with, sponsored or approved by PHC, and is likely to cause, and has caused, confusion with PHC's use of its aforesaid famous PLANT HEALTH CARE marks or otherwise to cause deception or mistake as to the source, sponsorship or approval of ORGANIC's aforesaid fertilizer and soil conditioner products.

17. The fertilizer and soil conditioner products of ORGANIC sold under the "ORGANIC PLANT HEALTHCARE" name and designation travel in the same channels of trade as PHC's fertilizer and soil conditioner products sold under its PLANT HEALTH CARE marks. ORGANIC's customers receive the same trade publications, catalogs, advertisements and products as customers of PHC.

18. In separate correspondence, PHC informed ORGANIC of its rights in PHC's PLANT HEALTH CARE marks and demanded that ORGANIC cease and desist all use of the "ORGANIC PLANT HEALTHCARE" name and designation. Despite PHC's demands, ORGANIC continues to sell and offer for sale fertilizer and soil conditioner products under the "ORGANIC PLANT HEALTHCARE" name and designation in direct contravention of PHC's rights.

19. On information and belief, ORGANIC's conduct is a knowing, intentional and willful attempt to deceive the public and trade upon the trademarks and goodwill of PHC by selling, or enabling others to sell, ORGANIC's fertilizer and soil conditioner products as products of PHC or as associated products, because ORGANIC has ignored PHC's inquiries and requests to cease and desist its actionable conduct.

20. The aforesaid acts of ORGANIC, unless enjoined by this Court, will continue to cause great and irreparable injury to PHC.

Count I - Federal Trademark Infringement

21. PHC incorporates the allegations of paragraphs 1-20 as if fully set forth herein.

22. The use of "ORGANIC PLANT HEALTHCARE" by ORGANIC is likely to cause mistake and confusion in that members of the public are likely to believe that ORGANIC's fertilizer and/or soil conditioner products were manufactured by or under license from PHC. Accordingly, the sale and offer for sale of such products constitutes willful and intentional infringement of PHC's United States Trademark Registration Nos. 3,213,474 for the federally registered trademark "PLANT HEALTH CARE"; 3,213,473 for the federally registered trademark "PLANT HEALTH CARE, INC."; and 2,619,263 for the federally registered trademark "PLANT HEALTH CARE, INC. and Design" under the United States Trademark Act, 15 U.S.C. §§ 1051-1127.

WHEREFORE, Plaintiff prays:

- (a) That ORGANIC be adjudged to have infringed United States Trademark Registration Nos. 3,213,474; 3,213,473 and 2,619,263;
- (b) That ORGANIC be enjoined and restrained from the manufacture, sale and offer for sale of any fertilizer and/or soil conditioner product under the "ORGANIC PLANT HEALTHCARE" company name and/or designation or any colorable variations thereof;
- (c) That ORGANIC be required to pay to PHC its profits and PHC's damages for injuries sustained by PHC as a result of ORGANIC's infringement of PHC's registered

trademarks, in an amount to be determined at trial, together with interest pursuant to 15 U.S.C. § 1117;

(d) That ORGANIC be required to deliver to PHC for destruction all products, labels and other packaging and advertising which bears the "ORGANIC PLANT HEALTHCARE" name and/or designation;

(e) That ORGANIC be required to remove from its website all pages containing "ORGANIC PLANT HEALTHCARE";

(f) That ORGANIC be required to cancel the domain name "www.organicplanthealthcare.com";

(g) That PHC may have a judgment for costs, including its reasonable attorneys fees; and

(h) That PHC may have such other and further relief as the equities of the case may require and to the Court may seem just.

Count 2 - Federal Unfair Competition and False Designation of Origin

23. PHC incorporates the allegations of paragraphs 1-20 as if fully set forth herein.

24. ORGANIC's use of "ORGANIC PLANT HEALTHCARE" is likely to cause mistake and confusion in that members of the public are likely to believe that ORGANIC's fertilizer and/or soil conditioner products originate from or are being sold under license from PHC. Accordingly, the sale and offer for sale by ORGANIC of such products bearing or sold under the name "ORGANIC PLANT HEALTHCARE" constitutes unfair competition and false designation of origin in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

WHEREFORE, Plaintiff prays:

- (a) That ORGANIC be adjudged to have violated § 43(a) of the Lanham Act;
- (b) That ORGANIC be enjoined and restrained from the manufacture, sale and offer for sale of any fertilizer and/or soil conditioner product under the company name and/or designation "ORGANIC PLANT HEALTHCARE" or any colorable variations thereof;
- (c) That ORGANIC be required to pay to PHC its profits and PHC's damages for injuries sustained by PHC as a result of ORGANIC's infringement of PHC's registered trademarks, in an amount to be determined at trial, together with interest pursuant to 15 U.S.C. § 1117;
- (d) That ORGANIC be required to deliver to PHC for destruction all products, labels and other packaging and advertising which bears the "ORGANIC PLANT HEALTHCARE" name and/or designation;
- (e) That ORGANIC be required to remove from its website all pages containing "ORGANIC PLANT HEALTHCARE";
- (f) That ORGANIC be required to cancel the domain name "www.organicplanthealthcare.com";
- (g) That PHC may have a judgment for costs, including its reasonable attorneys fees; and
- (h) That PHC may have such other and further relief as the equities of the case may require and to the Court may seem just.

Count 3 - Common Law Unfair Competition and False Designation of Origin

25. PHC incorporates the allegations of paragraphs 1-20 as if fully set forth herein.

26. ORGANIC's use of "ORGANIC PLANT HEALTHCARE" is likely to cause mistake and confusion in that members of the public are likely to believe that ORGANIC's fertilizer and/or soil conditioner products originate from or are being sold under license from PHC. Accordingly, the sale and offer for sale by ORGANIC of such products bearing or sold under the name "ORGANIC PLANT HEALTHCARE" constitutes unfair competition and false designation of origin in violation of the common law of unfair competition of the Commonwealth of Pennsylvania.

WHEREFORE, Plaintiff prays:

- (a) That ORGANIC be adjudged to have violated the common law of unfair competition of the Commonwealth of Pennsylvania;
- (b) That ORGANIC be enjoined and restrained from the manufacture, sale and offer for sale of any fertilizer and/or soil conditioner product under the name and/or designation "ORGANIC PLANT HEALTHCARE" or any colorable variations thereof;
- (c) That ORGANIC be required to pay to PHC its profits, and PHC's damages for injuries sustained by PHC as a result of ORGANIC's actionable conduct, in an amount to be determined at trial, together with interest;
- (d) That ORGANIC be required to deliver to PHC for destruction all products, labels and other packaging and advertising which bears the "ORGANIC PLANT HEALTHCARE" name and/or designation;
- (e) That ORGANIC be required to remove from its website all pages containing "ORGANIC PLANT HEALTHCARE";
- (f) That ORGANIC be required to cancel the domain name "www.organicplanthealthcare.com";

(g) That PHC may have a judgment for costs, including its reasonable attorneys fees; and

(h) That PHC may have such other and further relief as the equities of the case may require and to the Court may seem just.

Count 4 - Federal Trademark Dilution

27. PHC incorporates the allegations of paragraphs 1-20 as if fully set forth herein.

28. ORGANIC's use of "ORGANIC PLANT HEALTHCARE" has and will continue to dilute the distinctiveness of PHC's PLANT HEALTH CARE marks in violation of the Federal Dilution Act, 15 U.S.C. § 1125(c) (Lanham Act § 43(c)).

WHEREFORE, Plaintiff prays:

- (a) That ORGANIC be adjudged to have violated § 43(c) of the Lanham Act;
- (b) That ORGANIC be further adjudged to have willfully violated § 43(c) of the Lanham Act;
- (c) That ORGANIC be enjoined and restrained from the manufacture, sale and offer for sale of any fertilizer and/or soil conditioner product under the company name and/or designation "ORGANIC PLANT HEALTHCARE" or any colorable variations thereof;
- (d) That ORGANIC be required to pay to PHC its profits and PHC's damages for injuries sustained by PHC as a result of ORGANIC's dilution of PHC's registered trademarks, in an amount to be determined at trial, together with interest pursuant to 15 U.S.C. § 1117;
- (e) That ORGANIC be required to deliver to PHC for destruction all products, labels and other packaging and advertising which bears the company name and/or designation "ORGANIC PLANT HEALTHCARE";

- (f) That ORGANIC be required to remove from its website all pages containing "ORGANIC PLANT HEALTHCARE";
- (g) That ORGANIC be required to cancel the domain name "www.organicplanthealthcare.com";
- (h) That PHC may have a judgment for costs, including its reasonable attorneys fees; and
- (i) That PHC may have such other and further relief as the equities of the case may require and to the Court may seem just.

Count 5 - Pennsylvania State Trademark Dilution

29. PHC incorporates the allegations of paragraphs 1-20 as if fully set forth herein.

30. ORGANIC's use of "ORGANIC PLANT HEALTHCARE" has and will continue to dilute the distinctiveness of PHC's PLANT HEALTH CARE marks in violation of the anti-dilution law of the Commonwealth of Pennsylvania, 54 Pa.C.S.A. § 1124.

WHEREFORE, Plaintiff prays:

- (a) That ORGANIC be adjudged to have violated 54 Pa.C.S.A. § 1124;
- (b) That ORGANIC be further adjudged to have willfully violated 54 Pa.C.S.A. § 1124;
- (c) That ORGANIC be enjoined and restrained from the manufacture, sale and offer for sale of any fertilizer and/or soil conditioner product under the company name and/or designation "ORGANIC PLANT HEALTHCARE" or any colorable variations thereof;

- (d) That ORGANIC be required to pay to PHC its profits, and PHC's damages for injuries sustained by PHC as a result of ORGANIC's actionable conduct, in an amount to be determined at trial, together with interest;
- (e) That ORGANIC be required to deliver to PHC for destruction all products, labels and other packaging and advertising which bears the company name and/or designation "ORGANIC PLANT HEALTHCARE";
- (f) That ORGANIC be required to remove from its website all pages containing "ORGANIC PLANT HEALTHCARE";
- (g) That ORGANIC be required to cancel the domain name "www.organicplanthealthcare.com";
- (h) That PHC may have a judgment for costs, including its reasonable attorneys fees; and
- (i) That PHC may have such other and further relief as the equities of the case may require and to the Court may seem just.

A JURY TRIAL IS DEMANDED.

PLANT HEALTH CARE, INC.

Date: August 18, 2008

By: /s/ Bryan H. Opalko
Bryan H. Opalko
Pa. I.D. 86721
Lynn J. Alstadt
Pa. I.D. 23487
BUCHANAN INGERSOLL &
ROONEY PC
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Pittsburgh, Pennsylvania 15219
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Attorneys for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>(a) PLAINTIFFS <u>Plant Health Care, Inc.</u></p> <p>(b) County of Residence of First Listed <u>Allegheny</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys <u>Bryan H. Opalko and Lynn J. Aljadi</u> <u>Buchanan Ingersoll & Rooney PC, One Oxford Centre, 20th Fl., Pittsburgh, PA 15219</u> (Firm Name, Address, and Telephone Number)</p>	<p>DEFENDANTS <u>Organic Plant Healthcare, LLC</u></p> <p>County of Residence of First Listed Defendant <u>Mockingburg</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED</p> <p>Attorneys _____ Attorneys (If Known) _____</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:33%;"><input checked="" type="checkbox"/> 1</td> <td style="width:33%;"><input type="checkbox"/> 1</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> </tr> </table> <table style="width:100%;"> <tr> <td style="width:33%;">Incorporated or Principal Place of Business in This State</td> <td style="width:33%;"><input checked="" type="checkbox"/> 4</td> <td style="width:33%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Incorporated or Principal Place of Business in This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5																	
Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																	

IV. NATURE OF SUIT (Place an "X" in One Box Only)						
CONTRACT	TORTS	FOREFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <p>CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Other Civil Rights	<p>PERSONAL INJURY - Med. Malpractice</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 388 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detention <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 402 Appeal 28 USC 158 <input type="checkbox"/> 403 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patents <input checked="" type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 FICA (1955ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW CDHPW (405gg) <input type="checkbox"/> 7864 SSD Title XVI <input type="checkbox"/> 865 RSI (405gg) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 480 State Reapportionment <input type="checkbox"/> 490 Antitrust <input type="checkbox"/> 410 Banks and Banking <input type="checkbox"/> 420 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Sanitization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) _____ ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC sec. 1114, 1125

Brief description of cause: Infringement of Trademark Reg. Nos 3,213,474; 3,213,473 and 2,619,263

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE August 18, 2008 SIGNATURE OF ATTORNEY OF RECORD Bryan H. Opalko

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

JS 44AREVISED OCTOBER, 1993

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the ☐ Erie ☐ Johnstown ☒ Pittsburgh calendar.1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venango or Warren, OR any plaintiff or defendant resides in one of said counties2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties

3. Complete if on ERIE CALENDAR: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

4. Complete if on JOHNSTOWN CALENDAR: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. ☐ This case is related to Number _____ Judge _____
2. ☒ This case is not related to a pending or terminated case

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

1. CIVIL CATEGORY (Place x in only applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas Corpus
4. ☐ Civil Rights
5. ☒ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☐ All other federal question cases
8. ☐ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☐ Insurance indemnity, contract and other diversity cases.
10. ☐ Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct.

DATE Aug. 18, 2008 ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

Plant Health Care, Inc

V.

SUMMONS IN A CIVIL ACTION

Organic Plant Healthcare, LLC

CASE NUMBER: _____

TO: (Name and address of Defendant)

Organic Plant Healthcare, LLC
626 W. Charles Street
Matthews, North Carolina 28105

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY

(name and address)

Bryan H. Opalko
Lynn J. Alstadt
Buchanan Ingersoll & Rooney PC
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, Pennsylvania 15219

an answer to the complaint which is served on you with this summons, within 20 days after service

of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

DATE

RETURN OF SERVICE	
Service of the Summons and complaint was made by me(1) _____	DATE _____
NAME OF SERVER (PRINT) _____	TITLE _____

Check one box below to indicate appropriate method of service
<input type="checkbox"/> Served personally upon the defendant. Place where served: <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: <input type="checkbox"/> Returned unexecuted: <input type="checkbox"/> Other (specify):

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
_____	_____	_____
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on	_____	
Date	Signature of Server	

	Address of Server	